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UNCLAS ZAGREB 001413

SIPDIS

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SUBJECT: CROATIAN BAR ATTEMPTS TO BROADEN
RESTRICTIONS ON FOREIGN LAW FIRMS

1. SUMMARY: An attempt to restrict access to the Croatian market for legal services was brought to post's attention by a multinational (including U.S.) law firm. The law firm registered a branch in Croatia in October 2004. In January 2005, the Croatian Bar Association (HOK) published a circular letter stating that no foreign law firm could provide services in Croatia or form branches. In February 2005, the HOK, as an interested party, appealed the decision by the Commercial Court to register the law firm. The case has not been decided.

2. Econoffs spoke to contacts at the Trade Department, Ministry of Economy, and asked them to review the issue. Their position is that HOK's appeal is contrary to Croatia's GATS commitments, which according to Croatian law, supersedes national law but not the Constitution. The Ministry of Economy sent a position letter to the HOK but is not willing to submit the letter to the Commercial Court as an amicus brief. A contact at the Ministry of Justice intimated that such an action would constitute improper influence on the judiciary by the executive branch. Representatives from the Ministry of Economy are in contact with Justice and are requesting that the case decision be expedited. END SUMMARY AND COMMENT.

3. Under Croatia law (specifically, the Law on the Legal Profession and Croatia's GATS -- General Agreement on Trade in Services --schedule), branches of foreign law firms located in Croatia cannot provide legal services relating to Croatian law but may provide legal services relating to foreign and international law. Unlike Slovenia's GATS schedule, Croatia's schedule does not grant the national bar association power to approve the establishment of branch offices of international law firms.

4. HOK appealed the American firm's registration pursuant to Article 6 of the Croatian Law on the Legal Profession. Under this article, the HOK is authorized to take legal action against unauthorized legal services. HOK asserted that the registration of the foreign firm was unlawful because, among other reasons, such registration was not permitted by HOK and because the firm's limited liability registration put it in a more favorable position than Croatian law firms which have a different liability structure. HOK also asserts that according to Croatia's GATS schedule, foreign companies are not allowed to establish branch offices for legal services but only for consulting services on foreign and international law.

5. Post has been in contact with the Trade Department at the Ministry of Economy about this issue since April 2005. Our interlocutors were familiar with the issue but had not previously been approached for assistance. At our request, they reviewed the case and contacted the HOK. They sent a memo to the HOK and have met with the Ministry of Justice to request that the case be concluded in a timely manner. Per our contacts, the HOK is very confident they will win their case. The law firm is equally confident that the case will be decided in their favor.

6. Note: this is not the first attempt to restrict market access for foreign service providers in Croatia, in apparent violation of Croatia's GATS commitments. Earlier in the year, the Croatian Association of Accountants tried to introduce legislation that would require accounting firms to be over 70% Croatian capital. Luckily, this effort died under the weight of its own obvious illegality.

7. Post will continue to press for Croatia to adhere to its GATS commitments and promote access to the Croatian legal services market by U.S. firms.

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